**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 968/1997.

NATIONAL INSURANCE CO. LTD.
v
SMT. AMINA BEGUM & ANR.

Date of Judgment: 19th September, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. T.P. Sharma, for the appellant.
Mr. Davendra Raghav for the respondents.

By Court:

The appellant – Insurance Company is challenging the order dated 27.1.97 passed by the Workmen Compensation Commissioner, Bharatpur whereby the learned Commissioner has awarded a compensation of Rs. 2,32,970/- to the claimants alongwith a penalty of Rs. 10,000/-.

The brief facts of the case are that on 3.9.97 one Asgar Ali was coming from Agra to Gangapur after loading vegetables on a truck, bearing registration No. 407-UP-080/V/9358, around 1.15 p.m. while the truck was going on National Highway No. 11 near about Vachnanera the truck collided with a tanker which was parked on the side of the road. Due to the said collusion, Asgar Ali was seriously injured.

Subsequently, he scummed to his injuries. Smt. Amina Begum, the respondent before us, being the wife of Asgar Ali, filed a claim petition under Section 3/10 of the Workmen's Compensation Act, 1923 (henceforth to be referred to as 'the Act' for short) and pleaded that her husband was a permanent driver of respondent No.2 Jagdish Singh. He further claimed that at the time of his death her husband was 22 years old. She filed the said claim petition for a compensation of Rs. 3,43,123.50 paise. The Insurance Company, while filing the written statement, claimed that the driver did not have a valid licence at the time of the accident. It further argued that the Tribunal did not have the jurisdiction as the as the case related to a motor accident. However, after hearing both the sides, the impugned award was passed as mentioned above. Hence this appeal before this Court.

Mr. T.P. Sharma, the learned counsel for the appellant, has raised only a single plea before this Court. According to him during the course of the proceeding pending before the learned Commissioner, the Insurance Company had gotten the salary paid to the deceased investigated by a private

agency. According to the investigation report the deceased was earning merely Rs. 1,000/- per month. However, the Commissioner has calculated the compensation while taking the salary to be Rs. 2,200/- per month. Therefore, the very basis of the assessment of the compensation was misplaced. According to the learned counsel the said report was prepared on 19.3.97. However, as the award was passed on 27.1.97, he has requested that the case should be remanded back to the learned Commissioner.

Mr. Devendra Raghav, the learned counsel for the respondents-claimants, has vehemently argued that in an appeal a new factual position cannot be brought to the notice of the appellate court. While the impugned award was passed on 27.1.97, the investigation report was not ready till 19.3.97. Therefore, the said report cannot be acted upon by the learned Commissioner. The appellate court should only consider the evidence which was available before the Commissioner in order to examine the legality or illegality of the award. Merely because a report has been prepared after the passing of the award, it is not a reason for remanding back the case to the

Commissioner.

We have heard both the learned counsels and have perused the impugned award.

It is, indeed, a settled principle of law that new pleas and new facts cannot be raised in an appeal. It is only a question of law which can be agitated before the appellate court. The claim petition was filed in August, 1996 and the impugned award was passed on 27.1.97, therefore, the Insurance Company had ample time for the preparation of the investigation report. However, it was not diligent enough to ensure that the report is prepared and submitted before the learned Commissioner prior to his pronouncing the award. Hence, the case cannot be reopened now on the basis of the said report. The Insurance Company had not demolished the case of the claimant during the proceedings before the learned Commissioner. Therefore, the learned Commissioner was justified in passing the impugned award. Considering the fact that the deceased was only 22 years old and the claimant was a young widow, who had her entire life before her, a compensation of Rs. 2,32,970/- is most reasonable. Thus, this

Court is not inclined to interfere with the impugned award.

In the result, this appeal has no force. It is, hereby, dismissed.

(R.S. CHAUHAN) J.

MRG.